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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 692

HARTFORD ACCIDENT & INDEMNITY COMPANY, APPELLANT,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS, EX REL. WALTER W. McLAUGHLIN, DIRECTOR OF AGRICULTURE

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

FILED JANUARY 10, 1936.

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IN MUNICIPAL COURT OF CHICAGO

First Class No. 2765929

Claim for $5,000.00

PEOPLE OF THE STATE OF ILLINOIS EX REL. WALTER W. McLAUGHLIN, Director of Agriculture, Plaintiff,

vs.

G. H. CROSS COMPANY, a Corporation and HARTFORD ACCIDENT & INDEMNITY Co., a Corporation, Defendant

STATEMENT OF CLAIM—Filed May 23, 1933

Plaintiff's claim is for money due on bond as hereinafter set forth.

Otto Kerner, Attorney General State of Illinois, by Louis Salinger, Special Asst. Attorney General, Attorney for Plaintiff, Business or Residence Address: 228 South Wabash Avenue, Chicago, Illinois.

Affidavit of Plaintiff's Claim

STATE OF ILLINOIS,
County of Cook,
City of Chicago, ss:

Horace I. Lepman, being first duly sworn, on oath states that he is the agent for the plaintiff in the above entitled cause; that he has knowledge of the facts that said cause is a suit for the recovery of money only; that the nature of plaintiff's demand is for money due on bond as herein alleged and that there is due to plaintiff, from the defendant, after allowing to defendant all just credits, deduction and set-offs the sum of Five Thousand dollars and no cents ($5,000.00).

Horace I. Lepman.

Subscribed and sworn to before me this 22nd day of May, 1933. James J. Doyle, Notary Public. (Seal.)

[fol. 7] IN MUNICIPAL COURT OF CHICAGO

[Title omitted]

STATEMENT OF CLAIM

The People of the State of Illinois, plaintiff, by Otto Kerner, Attorney General of the State of Illinois, by Louis Salinger, Assistant Attorney General, complain of the G. H. Cross Company, a corporation, and the Hartford Accident and Indemnity Company, a corporation, of a plea that they do render to the plaintiff the sum of Five Thousand Dollars ($5,000.00) which they owe to and unjustly detain from the plaintiff.

For that whereas, on the first day of July, A. D. 1931 the said G. H. Cross Company was a corporation duly organized and existing under the laws of the State of Illinois, and was engaged in the business of receiving farm produce for sale on commission at 72 South Water Market, in the City of Chicago; and

For that whereas, the defendant, Hartford Accident and Indemnity Company on said date was a corporation duly organized under the laws of the State of Connecticut and engaged in the State of Illinois in the business of acting as surety on bonds and that on the said day aforesaid the defendants did execute and deliver to the plaintiff a certain bond or undertaking.

And on that occasion they, the G. H. Cross Company, and the Hartford Accident and Indemnity Company, defendants, then and there by their writing obligatory aforesaid jointly and severally acknowledged themselves to be held and firmly bound unto the plaintiff in the sum of Five Thousand Dollars ($5,000.00) to be paid to the plaintiff, [fol. 8] which said writing obligatory was and is subject to a certain condition thereon written to the effect that if the G. H. Cross Company which had applied or at the date of said bond was about to apply to the Director of Agriculture of the State of Illinois for a license to engage in the business of receiving farm produce for sale on commission until the first day of July 1932 at 70-72 South Water Market in the City of Chicago, Illinois, pursuant to the provisions of "An Act to Regulate the Consignment and Sale on commission of farm produce" approved June 28, 1919, in force July 1, 1919, as amended, and who has procured to be furnished this bond in accordance with the provisions of

said Act should honestly account for and handle all the produce received and should make payment to the consignors thereof of all moneys or things of value received for goods consigned to said principal for sale and should indemnify and keep indemnified said consignors from and against all fraudulent acts of said principal in the sale or handling of the goods of said consignors and should keep, perform and abide by all the terms, conditions and provisions of said Act and all lawful rules and regulations of the Department of Agriculture of the State of Illinois made in pursuance thereof, then the said obligation was to be void, otherwise to remain in full force and effect.

And thereupon the State of Illinois by the Director of Agriculture issued a license to the G. H. Cross Company to engage in the business of receiving farm produce for sale on commission, and thereupon the said G. H. Cross Company proceeded to engage in such business from thence hitherto.

And therefore the plaintiff says that there was delivered to the said G. H. Cross Company at 72 S. Water Market, in the City of Chicago, Illinois, certain produce for sale on commission of the kind and value by the consignor and at the time as follows:

H. N. Segerstrom, East Farms, Wash., 10-21-31, Apples, 608.15.

And for assigning a breach of said writing obligatory the plaintiff says that the said G. H. Cross Company did not honestly account for and handle nor make payment for the produce delivered as aforesaid, nor did it indemnify the consignors aforesaid against its fraudulent acts in the handling of the goods of the consignors aforesaid.

[fol. 9] By means of which premises an action has accrued to the plaintiff to demand of the defendants the sum of Five Thousand Dollars ($5,000.00).

Yet the defendants though often requested have not paid to the plaintiff the sum of money or any part thereof, but refuse so to do, to the damage of the plaintiff of Five Thousand Dollars ($5,000.00), and therefore the plaintiff brings suit.

State of Illinois, by Walter W. McLaughlin, Director of Agriculture.

By Otto Kerner, Attorney General of the State of Illinois.
By Louis Salinger, Special Asst. Attorney General.

[fols. 10-19] EXHIBIT "A" TO STATEMENT OF CLAIM

Know all men by these presents:

That we The G. H. Cross Company, as Principal and Hartford Accident and Indemnity Company, as Surety, are held and firmly bound unto the People of the State of Illinois in the sum of Five Thousand ($5,000.00) Dollars, lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

In witness whereof we have hereunto set our hands and seals this 1st day of July, A. D. 1931.

The condition of the above obligation is such that if the above bounden principal, who has applied or is about to apply to the Director of Agriculture of the State of Illinois for a license to engage in the business of receiving farm produce for sale on commission until the first day of July, 1932, at 70-72 S. Water Market, in the City of Chicago, Illinois, pursuant to the provisions of "An Act to regulate the consignment and sale on commission of farm produce," approved June 28, 1919, in force July 1, 1919, as amended, and who has procured to be furnished this bond in accordance with the provisions of said Act, shall honestly account for and handle all the produce received, and shall make payment to the consignors thereof of all moneys or things of value received for goods consigned to said principal for sale, and shall indemnify and keep indemnified said consignors from and against all fraudulent acts of said principal in the sale or handling of the goods of said consignors, and shall keep, perform and abide by all the terms, conditions and provisions of said Act, and all lawful rules and regulations of the Department of Agriculture of the State of Illinois made in pursuance thereof, then this obligation shall be void; otherwise to be and remain in full force and effect.

The G. H. Cross Company, by G. H. Cross, Pres. & Treas. (Seal.) The G. H. Cross Company, by T. A. T. Logus, Secretary. (Seal.) Hartford Accident & Indemnity Co. (Seal.) By Ward W. Wellar, Attorney-in-fact. (Seal.)

STATE OF ILLINOIS,
Cook County, ss:

I, Francis A. Kiesch, a Notary Public in and for the County and State aforesaid, do hereby certify that G. H. Cross and W. T. Rogers, who are each personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act for the purposes therein set forth.

Francis A. Liesch, Notary Public.

[fol. 20] IN MUNICIPAL COURT OF CHICAGO

First Class No. 2765929

[Title omitted]

AFFIDAVIT OF MERITS—Filed June 22, 1933

Laurence E. Johnson makes oath and says that he is the duly authorized agent of the defendant, Hartford Accident & Indemnity Company in the above entitled cause, and that he verily believes that it has a good defense to this suit, upon the merits, to the whole of the plaintiff's demand.

Affiant further states that the defense of the defendant to said suit is as follows:

1. Defendant avers that the alleged bond or undertaking attached to the plaintiff's statement of claim was not approved by the Director of Agriculture as is required by Section 3 of the Act entitled: "An Act to regulate the consignment and sale on commission of farm produce, and to repeal an Act therein named," approved June 28, 1919, as amended, under which Act such alleged bond was given.

2. Defendant denies that The G. H. Cross Company did in the manner, amount and at the time alleged in the plaintiff's statement of claim, receive farm produce on consignment at 72 South Water Market in the City of Chicago, for which it did not honestly account for and handle and make payment therefor.

3. Defendant further denies that The G. H. Cross Company committed any fraudulent acts in the handling and

sale of the farm produce described in the plaintiff's statement of claim.

4. Defendant avers that the alleged consignor of farm produce mentioned in the plaintiff's statement of claim did not within sixty days after the alleged shipment of the farm produce therein described, make a demand upon the G. H. Cross Company for either an honest accounting or payment, [fol. 21] and did not file with the Director of Agriculture a copy of this demand together with an affidavit setting forth the nature and amount of the goods consigned, the date of the consignment, the amount believed to be due and owing, together with bills of lading and delivery receipts showing the goods were shipped to and received by the consignee, The G. H. Cross Company.

5. Defendant further avers that Section 7 of the aforesaid Act requires a commission merchant to keep his records for a period of only six months, that more than nineteen months have elapsed since the date of the alleged shipment and transaction, and that such records are not now open to inspection by the plaintiff, therefore plaintiff cannot state that The G. H. Cross Company did not honestly account for and handle and make payment for the farm produce delivered to it for sale on consignment as alleged in plaintiff's statement of claim.

6. Defendant further avers that the Act entitled: "An Act to regulate the consignment and sale on commission of farm produce, and to repeal an Act therein named," approved June 28, 1919, as amended, is unconstitutional and void under the provisions of Article I, Section 8, clause 3 of the Constitution of the United States, in that such Act is a restriction on and a regulation of interstate commerce by the State of Illinois, and under Section 1 of the Fourteenth Amendment to the same in depriving the defendant of its property without due process of law, and a denial to the defendant of the equal protection of the laws.

7. Defendant further avers that the shipment alleged to have been made in plaintiff's statement of claim was a shipment of commodities in interstate commerce, and that if said Act of the State of Illinois is construed to cover shipments in interstate commerce it is unconstitutional and void under the provisions of Article I, Section 8, clause 3

of the Constitution of the United States in that such Act as so construed is a restriction on and a regulation of inter- [fols. 22-25] state commerce and under Section 1 of the Fourteenth Amendment of the Constitution of the United States in depriving defendant of its property without due process of law and denying to the defendant equal protection of the laws.

8. Defendant further avers that the shipment alleged by the plaintiff to have been made was a shipment in interstate commerce, and that the Congress of the United States did in 1930 enact a certain statute entitled the Perishable Commodities Act of 1930 (46 Statutes 531) which covers the subject matter of shipments in interstate commerce of perishable commodities, being the same subject matter as is covered in the above mentioned Act of the State of Illinois, and the defendant therefore avers that said statute of the State of Illinois is superseded and becomes of no effect as to such interstate shipment.

9. Defendant further avers that the aforesaid Act of the State of Illinois is unconstitutional and void under the provisions of Article II, Sections 2 and 19 of the Constitution of the State of Illinois in depriving defendant of its property without due process of law and denying to it equal protection of the law, of a legal remedy for injury to its property and of right and justice; and also under the provisions of Article IV, Section 22 of the same, in being special or class legislation. And defendant further avers that said Act of the State of Illinois is inconsistent, uncertain, incomplete and indefinite, therefore void.

10. Defendant further denies that any action has accrued to the plaintiff to demand of the defendant the sum of Five Thousand ($5,000.00) Dollars or any other sum, that the defendant owes the plaintiff this sum or any other sum, and that there is due to the plaintiff after all just credits, deductions and set-offs, the sum of Five Thousand ($5,-000.00) Dollars.

Lawrence G. Johnson.

Subscribed and sworn to before me this 20 day of June, 1933. Lulu M. Kleingruen, Notary Public. (Seal.)

[fol. 26] IN MUNICIPAL COURT OF CHICAGO

First Class No. 2765929

[Title omitted]

AMENDED AFFIDAVIT OF MERITS—Filed Oct. 13, 1933

L. W. McConnaughay makes oath and says that he is the duly authorized agent of the defendant, Hartford Accident & Indemnity Company in the above entitled cause, and that he verily believes that it has a good defense to this suit, upon the merits, to the whole of the plaintiff's demand.

Affiant further states that the defense of the defendant to said suit is as follows:

1. Defendant avers that the alleged bond or undertaking attached to the plaintiff's statement of claim, was not approved by the Director of Agriculture as is required by Section 3 of the Act entitled: "An Act to regulate the consignment and sale on commission of farm produce, and to repeal an Act therein named", approved June 28, 1919, as amended, under which Act such alleged bond was given.

2. Defendant denies that The G. H. Cross Company did in the manner, amount, and at the time alleged in the plaintiff's statement of claim, receive farm produce on consignment at 72 South Water Market in the City of Chicago, for which it did not honestly account for and handle and make payment therefor.

3. Defendant further denies that The G. H. Cross Company committed any fraudulent acts in the handling and sale of the farm produce described in the plaintiff's statement of claim.

4. Defendant avers that the alleged consignor of farm produce mentioned in the plaintiff's statement of claim did not within sixty days after the alleged shipment of farm produce therein described, make a demand upon The G. H. Cross Company for either an honest accounting or payment, and did not file with the Director of Agriculture a copy of this demand together with an affidavit setting forth the nature and amount of the goods consigned, the date of the consignment, the amount believed to be due and owing,

together with bills of lading and delivery receipts showing the goods were shipped to and received by the consignee, The G. H. Cross Company.

5. Defendant further avers that Section 7 of the aforesaid Act requires a commission merchant to keep his records for a period of six months only, that more than nine-
[fol. 27] teen months have elapsed since the date of the alleged shipment and transaction and the filing of this action, and that such records are not now open to inspection by the plaintiff, therefore plaintiff cannot state that The G. H. Cross Company did not honestly account for and handle and make payment for the farm produce delivered to it for sale on consignment as alleged in the plaintiff's statement of claim.

6. Defendant further avers that the Act entitled: "An Act to regulate the consignment and sale on commission of farm produce, and to repeal an Act therein named", approved June 28, 1919, as amended, is unconstitutional and void under the provisions of Article I, Section 8, clause 3 of the Constitution of the United States, in that such Act is a restriction on and a regulation of interstate commerce by the State of Illinois.

7. Defendant further avers that the bond sued on is unenforceable and void as against the defendant, The G. H. Cross Company, the principal thereon, and the defendant, Hartford Accident & Indemnity Company, the surety, or either of them, as it was exacted from the defendant, The G. H. Cross Company, under a statute of the State of Illinois entitled: "An Act to regulate the consignment and sale on commission of farm produce, and to repeal and Act therein named", approved June 28, 1919, as amended, requiring said defendant, The G. H. Cross Company, as a commission merchant, to apply for and secure a license before engaging in the business of a commission merchant, and requiring said commission merchant to secure and deposit with the Department of Agriculture of the State of Illinois a surety bond, which bond is now the basis of this action, which statute is contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that it deprives said defendant, The G. H. Cross Company, of its property without due process of law, and denies to it the equal protection of the laws.

8. Defendant further avers that the bond sued on in this case is void and unenforceable, as it was exacted of the defendant, The G. H. Cross Company under the terms and conditions of an Act of the State of Illinois entitled: "An Act to regulate the consignment and sale on commission of farm produce, and to repeal an Act therein named", approved June 28, 1919, as amended, which said Act was unconstitutional and void in that it contravened the provisions of Article I, Section 8, clause 3, of the constitution of the United States, as said Act was a restriction on and regulation of interstate commerce and imposed a burden on interstate commerce contrary to said provisions.

9. Defendant further avers that the shipment alleged to have been made in plaintiff's statement of claim, was a shipment of commodities in interstate commerce, and that if said Act of the State of Illinois is construed to cover shipments in interstate commerce, it is unconstitutional and void under the provisions of Article I, Section 8, clause 3, of the Constitution of the United States, in that such Act as so construed, is a restriction on and a regulation of interstate commerce.

10. Defendant further avers that the shipment alleged by the plaintiff to have been made, was a shipment in interstate commerce, and that the Congress of the United States in 1930 did enact a certain statute entitled the Perishable Commodities Act of 1930, (46 Statutes 531), which covers the subject matter of consignment shipments of perishable commodities in interstate commerce, being the same subject matter as is covered in the above mentioned Act of the State of Illinois, and the defendant avers that said statute of the State of Illinois is thereby superseded and becomes of no effect as to such shipments of perishable commodities in interstate commerce.

11. Defendant further avers that the aforesaid Act of the State of Illinois is unconstitutional and void under the provisions of Article II, Sections 2 and 19 of the Constitution of the State of Illinois, in that it deprives the defendant, The G. H. Cross Company, of its property without due process of law and denying to it equal protection of the law, and of a legal remedy for injury to its property and of right and justice and also under the provisions of Article [fol. 28] IV, Section 22 of the same, in being special or

class legislation. Defendant further avers that said Act of the State of Illinois is inconsistent, uncertain, incomplete and indefinite, therefore void.

12. Defendant further denies that any action has accrued to the plaintiff to demand of the defendant the sum of Five Thousand Dollars ($5000.00) or any other sum, that the defendant owes the plaintiff this sum or any other sum, and that there is due to the plaintiff after all its just credits, deductions and set-offs, the sum of Five Thousand Dollars ($5,000.00).

Lloyd W. McConnaughay.

Subscribed and sworn to before me this 13th day of October, A. D. 1933. Paul O. Menges, Notary Public. (Seal.)

[fols. 29-33] In Municipal Court of Chicago

[Title omitted]

First Class. No. 2765929

Order Consolidating Causes—Dec. 29, 1933

By agreement of the plaintiffs and the defendant herein, it is ordered by the Court that this cause be consolidated with case #2765930.

[fols. 34-65] In Municipal Court of Chicago

First Class No. 2765929

The People of the State of Illinois, etc.

vs.

G. H. Cross Company, etc., et al.

Judgment—Feb. 13, 1934

Finding: issues for plaintiff and against defendants, G. H. Cross Company, a corporation, and Hartford Accident & Indemnity Co., a corporation. Defendant, Hartford Accident & Indemnity Co. excepts.

Motion for new trial made and overruled. Exception.

Motion for arrest of judgment made and overruled. Exception.

Judgment on finding versus defendants G. H. Cross Company, a corporation, and Hartford Accident & Indemnity Co., a corporation, in debt $5,000.00; damages assessed $608.15. Judgment to be satisfied upon the payment of $608.15 with costs and interest from date of judgment, and that execution issue thereon.

Defendant duly excepts.

Enter.

John J. Lupe, Judge, Municipal Court.

February 13, 1934.

[fols. 66-71] In Municipal Court of Chicago

No. 2765929

[Title omitted]

Report of Proceedings—Filed March 24, 1934

[fol. 72] Exhibit 1

In Municipal Court of Chicago

[Title omitted]

Stipulation of Facts

It is hereby stipulated and agreed by and between The People of the State of Illinois, ex rel Walter W. McLaughlin, Director of Agriculture through its attorney, Otto Kerner, Attorney General of the State of Illinois by Louis Salinger, Assistant Attorney General and Hartford Accident and Indemnity Company through its attorney, Arthur L. Israel, that the following stipulation of Facts made a part hereof and hereto attached including the copies of documents attached hereto as exhibits, when offered in evidence either in whole or in part, by any party to this cause in any trial of this cause, shall be received in evidence by the *the* court, subject to the limitations named herein, and subject to all objections as to relevancy

and materiality, but upon no other grounds, and shall be given the same force and effect as if witnesses duly qualified and competent were called and testified to the fact and exhibits herein set forth.

It is further agreed that all copies of exhibits attached to this Stipulation, as referred to herein, shall be given like effect as though they were originals properly identified and were set out in full in this Stipulation, instead of being attached as exhibits, and shall be received in evidence by the court subject only to the objections referred to above.

Any party to this Stipulation may offer in evidence any or all parts thereof as he may desire.

Any party to this Stipulation may submit such further evidence upon any fact in issue in this case as may be otherwise relevant, material or competent.

Otto Kerner, Attorney General of Illinois, by Louis Salinger, Asst. Attorney General for Plaintiff.
Arthur L. Israel, Attorney for Hartford Accident and Indemnity Company.

[fol. 73] 1. The G. H. Cross Company was a corporation organized under the laws of the State of Illinois, its place of business being Nos. 70 and 72 South Water Market in the City of Chicago, and that it there solicited shipments of farm produce as defined in Section 1 of "An Act to regulate the consignment and sale on commission of farm produce and to repeal an Act therein named", approved June 28, 1919, as amended, from dealers and producers throughout the United States, and received from these dealers and producers shipments of farm produce as so defined, which it handled for their account, charging a commission for such handling and sale. All farm produce received and handled was sold in the original packages as received from the consignors and no consignments were purchased by the G. H. Cross Company for its own account and resold by it.

2. Practically all the farm produce handled by the G. H. Cross Company originated and was shipped from states other than Illinois, less than five per cent of the total volume originating in Illinois. All shipments of farm produce remained the property of the consignors until sold for their account by The G. H. Cross Company.

3. The G. H. Cross Company could not have made a success of handling farm produce on consignments by handling only farm produce originating in Illinois. The shipments received from outside the State of Illinois increased and enhanced its business greatly, but it was necessary to handle, during certain periods of the year, shipments originating in the State of Illinois. The legislature in 1929 increased the size of the bond required from $2000.00 to $5000.00 and the premium on the larger bond was increased from $25.00 to $50.00 in 1930 and thereafter.

4. Even if the G. H. Cross Company had been engaged exclusively in the business of receiving consignments from outside the State of Illinois, the Director of the Department of Agriculture would have demanded that it procure a license and bond as set forth in Section 3 of the aforesaid Act provided, if the Department of Agriculture had knowledge that the said G. H. Cross Company was engaged in the interstate business as aforesaid.

5. As interpreted by the Director of the Illinois Department of Agriculture, the aforesaid Act required the G. H. Cross Company to secure a license and bond, and in order to be protected from prosecution thereunder, and in consequence of said interpretation, it did procure a license for the years beginning July 1, 1931 and July 1, 1932 and as a condition precedent therefor, did procure and submit certain surety bonds in the penal sum of $5000 each on which it was principal and the Hartford Accident & Indemnity Company was surety, copy of which bonds are attached herewith, and made a part hereof as Exhibits "A" and "B".

6. The facts set forth in items 1 to 5 inclusive of this stipulation apply equally as well to other persons, firms or corporations in the City of Chicago who would solicit, receive and handle farm produce for sale on commission.

7. The Hartford Accident and Indemnity Company as surety on the two bonds of the G. H. Cross Company for the years 1931 and 1932 herein referred to as Exhibits "A" and "B" was and since is in the business of surety for profit receiving therefor a cash premium for the purpose of entering on said bonds which premiums in each case amounted to $50.00 and which premiums were received by aforesaid Hartford Accident and Indemnity Company as consideration of issuance of aforesaid bonds.

8. The bonds were received in the Illinois Department of Agriculture in the City of Chicago and were filed in said Department and after filing thereof the Department of Agriculture at the request of the Director of Agriculture in each respective case aforesaid issued a license to said G. H. Cross Company for the purpose of permitting them to enter into and engage in the business of commission merchant as provided in said Act referred to in Paragraph 1 above, and the said G. H. Cross Company accepted said license and proceeded to act as commission merchants.

[fol. 74] 9. The G. H. Cross Company was actively engaged in the business of commission merchant from and for a long time preceding July 1, 1931 to October 12, 1932, on which date an involuntary petition in bankruptcy was duly filed against it in the United States District Court, for the Northern District of Illinois, Eastern Division thereof. On the 4th of November, 1932, said G. H. Cross Company was adjudged a bankrupt. During the said period from July 1, 1931, to October 12, 1932, in the case of each consignor on account of whom it had received and handled farm produce, said G. H. Cross Company did issue and mail an account of sales showing the selling price of the consigned produce, the transportation and drayage charges, the commission or brokerage, and the net proceeds due to such consignors, said account of sales being true and accurate, and free from fraud.

10. The shipments of farm produce alleged in the plaintiff's statement of claim were made to the G. H. Cross Company on the dates stated, the amounts due on these shipments are as there stated, and so appear on the books of the G. H. Cross Company but that no part of said accounts have been paid to the various consignors.

11. No demand on the G. H. Cross Company was made by any of the consignors of the above described farm produce within sixty days after such shipment, for either an honest accounting or payment, neither was any copy of such demand together with bills of lading and express receipts showing that the goods were shipped to and received by the G. H. Cross Company sent to the Department of Agriculture together with a verified statement from such consignor within ten days after such demand, stating the amount believed to be due and owing. Further, the Department of Agriculture was not so informed by any such

consignor and not having received any such verified complaint no hearing was called thereon, nor was the license of the G. H. Cross Company revoked at any time within aforementioned period, nor was said company ever prosecuted for failure to honestly account for and handle and make payment to the consignors of farm produce of all moneys or things of value received by it from the sale of such farm produce.

12. On or about October 13, 1931, H. N. Segerstrom of East Farms, Washington, consigned to the G. H. Cross Company certain apples which the G. H. Cross Company agreed to handle on a commission basis in accordance with the definitions given a commission merchant under the Act hereinbefore stated. The net proceeds of this consignment, as shown by the books of the G. H. Cross Company was $608.15, and for which said H. N. Segerstrom was not paid. As is the custom on the part of commission merchants in handling certain car load lot shipments of apples, some apples shipped by H. N. Segerstrom of East Farms, Washington were placed in cold storage by the G. H. Cross Company and charges amounting to the sum of $168.93 were deducted from the gross sales as indicated in the account sales dated July 13, 1932. These apples were sold on different dates prior to July 1, 1932, but the consignor was advised thereof subsequent to July 13, 1932. The storage of these apples by the consignee was for the sole purpose of getting the best selling price for these apples. An account sales from the G. H. Cross Company to the said H. N. Segerstrom was prepared as shown by their said account sales of July 13, 1932 and subsequently thereto said account sales was mailed to the said H. N. Segerstrom at East Farms, Washington.

13. By virtue of an Act of Congress of the United States, entitled "The Perishable Agricultural Commodities Act of 1930" (46 Stat. 531—71st Congress), the said G. H. Cross Company was duly licensed as a commission merchant by the United States Department of Agriculture for the periods from July 1, 1931 to July 1, 1932 and from July 1, 1932 to July 1, 1933.

14. The Illinois Department of Agriculture did not inspect the premises books or records of the G. H. Cross Company at any time during the period *of* from July 1, 1931 to July 1, 1933, on its own motion or in response

to any complaint against the company received by it, neither does it know that the shipments alleged in the statement of claim herein, are the only shipments received by the G. H. Cross Company for which payment has not been made to the consignors thereof or for which an honest accounting may be claimed not to have been made. But it is a fact, however, that when the G. H. Cross Com-
[fol. 75] pany went into bankruptcy, the claims upon which these suits are based were actual claims as shown by the books of the G. H. Cross Company in bankruprcy proceedings and as far as known by the Department of Agriculture is a complete list of consignment creditors of said G. H. Cross Company.

O. K., J. D. D.

[fol. 76] Exhibit "A" to stipulation of facts omitted. Printed side page 10, ante.

[fols. 77-84] Exhibit "B" to stipulation of facts omitted. Printed side page 91, post.

[fol. 85] IN MUNICIPAL COURT OF CHICAGO

First Class No. 2765930

PEOPLE OF THE STATE OF ILLINOIS ex Rel. WALTER W. McLAUGHLIN, Director of Agriculture, Plaintiff,

vs.

G. H. CROSS COMPANY, a Corporation, and HARTFORD ACCIDENT & INDEMNITY Co., a Corporation, Defendant

Claim for $5000.00

STATEMENT OF CLAIM

Plaintiff's claim is for money due on bond as hereinafter set forth.

Otto Kerner, Attorney General State of Illinois, by Louis Salinger, Special Asst. Attorney General, Attorney for Plaintiff, Business or Residence Address: 228 South Wabash Avenue, Chicago, Illinois.

Affidavit of Plaintiff's Claim

STATE OF ILLINOIS,
County of Cook,
City of Chicago, ss:

Horace I. Lepman, being first duly sworn, on oath states that he is the agent for the plaintiff in the above entitled cause; that he has knowledge of the facts that said cause is a suit for the recovery of money only; that the nature of plaintiff's demand is for money due on bond as herein alleged, and that there is due to plaintiff, from the defendant, after allowing to defendant all just credits, deduction and set-offs, the sum of five thousand dollars and no cents ($5,000.00).

Horace I. Lepman.

Subscribed and sworn to before me this 22nd day of May, 1933. James J. Doyle, Notary Public. (Seal.)

[fol. 86] IN MUNICIPAL COURT OF CHICAGO

[Title omitted]

STATEMENT OF CLAIM

The People of the State of Illinois, plaintiff, by Otto Kerner, Attorney General of the State of Illinois, by Louis Salinger, Assistant Attorney General, complain of the G. H. Cross Company, a corporation, and the Hartford Accident and Indemnity Company, a corporation, of a plea that they do render to the plaintiff the sum of Five Thousand Dollars ($5,000.00) which they owe to and unjustly detain from the plaintiff.

For that whereas, on the first day of July, A. D. 1932, the said G. H. Cross Company was a corporation duly organized and existing under the laws of the State of Illinois, and was engaged in the business of receiving farm produce for sale on commission at 72 South Water Market, in the City of Chicago; and

For that whereas, the defendant, Hartford Accident and Indemnity Company on said date was a corporation duly organized under the laws of the State of Connecticut and engaged in the State of Illinois in the business of acting as surety on bonds and that on the said day aforesaid the

defendants did execute and deliver to the plaintiff a certain bond or undertaking.

[fol. 87] And on that occasion they, the G. H. Cross Company, and the Hartford Accident and Indemnity Company, defendants, then and there by their writing obligatory aforesaid jointly and severally acknowledged themselves to be held and firmly bound unto the plaintiff in the sum of Five Thousand Dollars ($5,000.00) to be paid to the plaintiff, which said writing obligatory was and is subject to a certain condition thereon written to the effect that if the G. H. Cross Company which had applied or at the date of said bond was about to apply to the Director of Agriculture of the State of Illinois for a license to engage in the business of receiving farm produce for sale on commission until the first day of July, 1933, at 70-72 South Water Market in the City of Chicago, Illinois, pursuant to the provisions of "An Act to Regulate the Consignment and Sale on commission of farm produce" approved June 28, 1919, in force July 1, 1919, as amended, and who has procured to be furnished this bond in accordance with the provisions of said Act should honestly account for and handle all the produce received and should make payment to the consignors thereof of all moneys or things of value received for goods consigned to said principal for sale and should indemnify and keep indemnified said consignors from and against all fraudulent acts of said principal in the sale or handling of the goods of said consignors and should keep, perform and abide by all the terms, conditions and provisions of said Act and all lawful rules and regulations of the Department of Agriculture of the State of Illinois made in pursuance thereof, then the said obligation was to be void, otherwise to remain in full force and effect.

And thereupon the State of Illinois by the Director of Agriculture issued a license to the G. H. Cross Company to engage in the business of receiving farm produce for sale on commission, and thereupon the said G. H. Cross Company proceeded to engage in such business from thence hitherto.

[fol. 88] And therefore the plaintiff says that there was delivered to the said G. H. Cross Company at 72 S. Water Market, in the City of Chicago, Illinois, certain produce for sale on commission of the kind and value by the consignors and at the times as follows:

Auburn Vegetable Growers	Auburn, Wash.	7-12-32	Cauliflower	$299.92
" " "	" "	7-20-32	Lettuce	
" " "	" "	8 -1-32	Lettuce	
Brandenburg, Frank	Vincennes, Ind.	7-25-32	Tomatoes	2.35
Dyer, John N.	" "	7-28-32	Apples, Toms., Cant.	108.63
Ehrlich, Wm.	Bloomington, Ill.	7-27-32	Tomatoes	13.99
" "	" "	7-28-32	"	
" "	" "	8- 2-32	"	
" "	" "	8- 4-32	"	
" "	" "	8- 6-32	"	
F. Fossmeyer & Sons	Vincennes, Ind.	7-26-32	Cantaloupes	1432.86
" "	" "	7-27-32	"	
" "	" "	7-28-32	"	
" "	" "	7-30-32	"	
" "	" "	8- 1-32	"	
" "	" "	7-26-32	"	
" "	" "	7-28-32	"	
Hogmire, W. H.	Bangor, Mich.	7-28-32	Apples	111.15
" "	" "	7-28-32	"	
" "	" "	8- 1-32	"	
" "	" "	8- 3-32	"	
" "	" "	8- 4-32	"	
W. F. Holland	Vincennes, Ind.	7-28-32	Cantaloupes	891.26
" "	" "	7-29-32	"	
" "	" "	7-30-32	Peaches, Tom., Cant.	
" "	" "	8- 4-32	Cantaloupes	
House, E. H.	Saugatuck, Mich.	7-29-32	Cherries	20.96
" "	" "	7-30-32	"	
Independent Melon Growers	Decker, Ind.	7-25-32	Cantaloupes	396.20
" " "	" "	7-25-32	"	
Kivits Bros.	Terre Haute, Ind.	7-27-32	Cucumbers	116.61
" "	" "	7-28-32	"	
" "	" "	7-29-32	"	
" "	" "	7-30-32	"	
Mowrey, C. W.	Anna, Ill.	7-26-32	Apples	136.78
" "	" "	7-27-32	"	
Royse Oexman	Vincennes, Ind.	7-27-32	Cantaloupes	154.98
Oexman, Walter	" "	8- 4-32	"	16.30
Osborne, M. A.	" "	8- 3-32	"	16.59
Osborne, Riley	" "	8- 1-32	Cantaloupes	471.18
" "	" "	8- 2-32	"	
" "	" "	8- 3-32	"	
Reitmeyer, Albert	" "	8- 2-32	Cantaloupes	410.07
" "	" "	8- 3-32	"	
" "	" "	8- 5-32	"	
[fol. 89]				
Reitmeyer, Ernest	Vincennes, Ind.	8- 4-32	Cantaloupes	54.00
Reitmeyer, Raymond	" "	7-25-32	"	18.15
Rendleman, Warren	Alto Pass, Ill.	8- 1-32	Tomatoes	7.07
" "	" " "	8- 4-32	"	

Santa Maria Produce Co.	Guadalupe, Cal.	5-18-32	Carrots	
" " " "	" "	5-24-32	"	
" " " "	" "	5-25-32	"	
" " " "	" "	5-28-32	"	
" " " "	" "	5-28-32	Lettuce	1,407.88
" " " "	" "	6- 4-32	"	
" " " "	" "	6-11-32	"	
" " " "	" "	8- 2-32	"	
F. H. Simpson Co.	Flora, Ill.	7-23-32	Apples	
" " "	" "	7-25-32	"	224.71
A. J. & C. E. Wharf	Vincennes, Ind.	7-25-32	Apples	23.21
John Dyer	" "	7-25-32	Apples	21.68
Sound Prod. Shippers, Inc.	Seattle, Wash.	7- 9-32	Lettuce	
" " " "	" "	7- 8-32	"	
" " " "	" "	7-12-32	"	
" " " "	" "	7-12-32	"	
" " " "	" "	7- 6-32	"	1,385.43
" " " "	" "	7-20-32	"	
" " " "	" "	7-25-32	"	
" " " "	" "	7-20-32	"	
Spencer, L. A.	South Haven, Mich.	7-28-32	Apples	3.76
Teschner, W. C.	Vincennes, Ind.	8- 4-32	Peaches	21.90
United Farmers Assn., of California	Los Angeles, Cal.	7-12-32	Peppers	126.39
Wash. Pea Gr. & Shippers Assn.,	Kent, Wash.	7-11-32	Peas	
" "	" "	6-30-32	Lettuce & Cauli.	
" "	" "	7-26-32	Mixed Vegts.	
" "	" "	6-28-32	Lettuce & Cauli.	
" "	" "	7- 5-32	Mixed Vegt.	
" "	" "	7- 9-32	Lettuce & Cauli.	
" "	" "	7- 4-32	Cauliflower	
" "	" "	7- 5-32	Lettuce	
" "	" "	6-24-32	Lettuce	5,152.74
" "	" "	7-12-32	Mixed Vegts.	
" "	" "	7-15-32	Peas	
" "	" "	7-11-32	Lettuce & Cauli.	
" "	" "	6-24-32	Lettuce & Cauli.	
" "	" "	7-19-32	Lettuce & Cauli.	
" "	" "	8- 1-32	Lettuce & Cauli.	
" "	" "	7-14-32	Lettuce & Peas	
" "	" "	7-21-32	Cauli. & Peas	
Wilson, W. A.	Vincennes, Ind.	8- 5-32	Cantaloupes	130.39
Burroughs, H. P.	Emmett, Idaho	6-28-32	Cherries	
" "	" "	7- 5-32	"	15.88
" "	" "	7- 6-32	"	
Tucker, W. C.	Emmett, Idaho	6-28-32	Cherries	
" "	" "	7- 5-32	"	641.52
" "	" "	7- 6-32	"	
Emmett Fruit Distbrs.	Emmett, Idaho	7- 5-32	Cherries	
" " "	" "	7- 6-32	"	2.18
[fol. 90]				
H. Shropshire	Emmett, Idaho	7- 5-32	Cherries	
" "	" "	7- 6-32	Cherries	21.68
Jason Kelly	Emmett, Idaho	7- 5-32	Cherries	
" "	" "	7- 6-32	"	35.12
J. L. Hall	Emmett, Idaho	7- 5-32	Cherries	2.62

And for assigning a breach of said writing obligatory the plaintiff says that the said G. H. Cross Company did not honestly account for and handle nor make payment for the produce delivered as aforesaid, nor did it indemnify the consignors aforesaid against its fraudulent acts in the handling of the goods of the consignors aforesaid.

By means of which premises an action has accrued to the plaintiff to demand of the defendants the sum of Five Thousand Dollars ($5,000.00).

Yet the defendants though often requested have not paid to the plaintiff that sum of money or any part thereof, but refuse so to do, to the damage of the plaintiff of Five Thousand Dollars ($5,000.00), and therefore the plaintiff brings suit.

State of Illinois, by Walter W. McLaughlin, Director of Agriculture.

By Otto Kerner, Attorney General of the State of Illinois.
By Louis Salinger, Special Asst. Attorney General.

[fols. 91-91a] EXHIBIT "A" TO STATEMENT OF CLAIM

Know all men by these presents:

That we The G. H. Cross Company, as Principal, and Hartford Accident and Indemnity Company, as Surety, are held and firmly bound unto the people of the State of Illinois in the sum of Five Thousand ($5,000.00) Dollars, lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

In witness whereof we have hereunto set our hands and seals this 1st day of July, A. D. 1932.

The condition of the above obligation is such that if the above bounden principal, who has applied or is about to apply to the Director of Agriculture of the State of Illinois for a license to engage in the business of receiving farm produce for sale on commission until the first day of July, 1933, at 70-72 South Water Market, Chicago, Illinois, in the City of —, Illinois, pursuant to the provisions of "An Act to regulate the consignment and sale on commission of farm produce," approved June 28, 1919, in force July 1,

1919, as amended, and who has procured to be furnished this bond in accordance with the provisions of said Act, shall honestly account for and handle all the produce received, and shall make payment to the consignors thereof of all moneys or things of value received for goods consigned to said principal for sale, and shall indemnify and keep indemnified said consignors from and against all fraudulent acts of said principal in the sale or handling of the goods of said consignors, and shall keep, perform and abide by all the terms, conditions and provisions of said Act, and all lawful rules and regulations of the Department of Agriculture of the State of Illinois made in pursuance thereof, then this obligation shall be void; otherwise to be and remain in full force and effect.

The G. H. Cross Company, Pres. (Seal.) Robert L. Berner, Secy. (Seal.) Hartford Accident & Indemnity Company, (Seal.) by Ward W. Wellar, Attorney-in-fact. (Seal.)

STATE OF ILLINOIS,
Cook County, ss:

I, Gilbert J. Boie, a Notary Public in and for the County and State aforesaid, do hereby certify that G. H. Cross and Robert F. Berner, who are each personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act for the purposes therein set forth.

Gilbert J. Boie, Notary Public.

[fol. 91b] IN MUNICIPAL COURT OF CHICAGO

First Class No. 2765930

[Title omitted]

AFFIDAVIT OF MERITS—Filed June 22, 1933

Lawrence E. Johnson makes oath and says that he is the duly authorized agent of the defendant, Hartford Accident & Indemnity Company in the above entitled cause, and that

he verily believes that it has a good defense to this suit, upon the merits, to the whole of the plaintiff's demand.

Affiant further states that the defense of the defendant to said suit is as follows:

1. Defendant avers that the alleged bond or undertaking attached to the plaintiff's statement of claim was not approved by the Director of Agriculture as is required by Section 3 of the Act entitled: "An Act to regulate the consignment and sale on commission of farm produce, and to repeal an Act therein named," approved June 28, 1919, as amended, under which Act such alleged bond was given.

2. Defendant denies that The G. H. Cross Company did in the manner, amount and at the times alleged in the plaintiff's statement of claim, receive farm produce on consign- [fol. 91c] ment at 72 South Water Market in the City of Chicago, for which it did not honestly account for and handle and make payment therefor.

3. Defendant further denies that The G. H. Cross Company committed any fraudulent acts in the handling and sale of the farm products described in the plaintiff's statement of claim.

4. Defendant avers that the alleged consignors of farm produce mentioned in the plaintiff's statement of claim did not within sixty days after the alleged shipments of farm produce therein described, make demands upon The G. H. Cross Company for either an honest accounting or payment, and did not file with the Director of Agriculture copies of such demands together with affidavits setting forth the nature and amount of the goods consigned, the dates of the consignments, the amounts believed to be due and owing, together with bills of lading and delivery receipts showing the goods were shipped to and received by the consignee, The G. H. Cross Company.

5. Defendant further avers that Section 7 of the aforesaid Act requires a commission merchant to keep his records for a period of only six months, that more than nine months have elapsed since the date of the alleged shipments and transactions, and that such records are not now open to inspection by the plaintiff, therefore plaintiff cannot state that the G. H. Cross Company did not honestly account for and handle and make payment for the farm pro-

duce delivered to it for sale on consignment as alleged in plaintiff's statement of claim.

6. Defendant further avers that the Act entitled: "An Act to regulate the consignment and sale on commission of farm produce, and to repeal an Act therein named," approved June 28, 1919, as amended, is unconstitutional and void under the provisions of Article I, Section 8, clause 3 of the Constitution of the United States, in that such Act [fol. 91d] is a restriction on and a regulation of interstate commerce by the State of Illinois, and under Section 1 of the Fourteenth Amendment to the same in depriving the defendant of its property without due process of law, and a denial to the defendant of the equal protection of the laws.

7. Defendant further avers that many of the shipments alleged to have been made in plaintiff's statement of claim were shipments of commodities in interstate commerce, and that if the said Act of the State of Illinois is construed to cover shipments in interstate commerce it is unconstitutional and void under the provisions of Article I, Section 8, clause 3 of the Constitution of the United States in that such Act as so construed is a restriction on and a regulation of interstate commerce, and under Section 1 of the Fourteenth Amendment of the Constitution of the United States in depriving defendant of its property without due process of law and denying to the defendant equal protection of the laws.

8. Defendant further avers that a great many of the shipments alleged by the plaintiff to have been made were shipments in interstate commerce, and that the Congress of the United States did in 1930 enact a certain statute entitled the Perishable commodities Act of 1930 (46 Statutes 531) which covers the subject matter of shipments in interstate commerce of perishable commodities, being the same subject matter as is covered in the above mentioned Act of the State of Illinois, and the defendant therefore avers that said statute of the State of Illinois is superseded and becomes of no effect as to such interstate shipments.

9. Defendant further avers that the aforesaid Act of the State of Illinois is unconstitutional and void under the provisions of Article II, Sections 2 and 19 of the Constitution [fols. 91e & 91f] of the State of Illinois in depriving defend-

ant of its property without due process of law and denying to it equal protection of the law, of a legal remedy for injury to its property and of right and justice; and also under the provisions of Article IV, Section 22 of the same, in being special or class legislation. And defendant further avers that said Act of the State of Illinois is inconsistent, uncertain, incomplete and indefinite, therefore void.

10. Defendant further denies that any action has accrued to the plaintiff to demand of the defendant the sum of Five Thousand ($5000.00) Dollars or any other sum, that the defendant owes the plaintiff this sum or any other sum, and that there is due to the plaintiff after all its just credits, deductions and set-offs, the sum of Five Thousand ($5000.00) Dollars.

Lawrence E. Johnson.

Subscribed and sworn to before me this 20 day of June, 1933. Lulu M. Klengman, Notary Public. (Seal.)

[fol. 92] IN MUNICIPAL COURT OF CHICAGO

First Class No. 2765930

[Title omitted]

AMENDED AFFIDAVIT OF MERITS

L. W. McConnaughay makes oath and says that he is the duly authorized agent of the defendant, Hartford Accident & Indemnity Company in the above entitled cause, and that he verily believes that it has a good defense to this suit, upon the merits, to the whole of the plaintiff's demand.

Affiant further states that the defense of the defendant to said suit is as follows:

1. Defendant avers that the alleged bond or undertaking attached to the plaintiff' statement of claim, was not approved by the Director of Agriculture as is required by Section 3 of the Act entitled: "An Act to regulate the consignment and sale on commission of farm produce, and to repeal an Act therein named," approved June 28, 1919, as amended, under which Act such alleged bond was given.

2. Defendant denies that The G. H. Cross Company did in the manner, amount, and at the times alleged in the plaintiff's statement of claim, receive farm produce on consignment at 72 South Water Market in the City of Chicago, for which it did not honestly account for and handle and make payment therefor.

3. Defendant further denies that The G. H. Cross Company committed any fraudulent acts in the handling and sale of the farm produce described in the plaintiff's statement of claim.

4. Defendant avers that the alleged consignors of farm produce mentioned in the plaintiff's statement of claim did not within sixty days after the alleged shipments of farm produce therein described make demands upon The G. H. Cross Company for either an honest accounting or payment, and did not file with the Director of Agriculture copies of such demands together with affidavits setting forth the nature and amount of the goods consigned, the dates of the consignments, the amounts believed to be due and owing, together with bills of lading and delivery receipts showing the goods were shipped to and received by the consignee, The G. H. Cross Company.

[fol. 93] 5. Defendant further avers that Section 7 of the aforesaid Act requires a commission merchant to keep his records for a period of six months only, that more than nine months have elapsed since the date of the alleged shipments and transactions and the filing of this action, and that such records are not now open to inspection by the plaintiff, therefore plaintiff cannot state that The G. H. Cross Company did not honestly account for and handle and make payment for the farm produce delivered to it for sale on consignment as alleged in the plaintiff's statement of claim.

6. Defendant further avers that the Act entitled: "An Act to regulate the consignment and sale on commission of farm produce, and to repeal an Act therein named," approved June 28, 1919, as amended, is unconstitutional and void under the provisions of Article I, Section 8, clause 3 of the Constitution of the United States, in that such Act is a restriction on and a regulation of interstate commerce by the State of Illinois.

7. The bond sued on, defendant avers, is unenforceable and void as against the defendant The G. H. Cross Company, the principal thereon, and the defendant Hartford Accident & Indemnity Company, the surety, or either of them, as it was exacted from the defendant The G. H. Cross Company, under a statute of the State of Illinois entitled: "An Act to regulate the consignment and sale on commission of farm produce, and to repeal an Act therein named," approved June 28, 1919, as amended, requiring said defendant, The G. H. Cross Company, as a commission merchant, to apply for and secure a license before engaging in the business of a commission merchant, and requiring said commission merchant to secure and deposit with the Department of Agriculture of the State of Illinois a surety bond, which bond is now the basis of this action, which said statute is contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that it deprives said defendant, The G. H. Cross Company, of its property without due process of law, and denies to it the equal protection of the laws.

8. Defendant further avers that the bond sued on in this case is void and unenforceable, as it was exacted of the defendant, The G. H. Cross Company under the terms and conditions of an Act of the State of Illinois entitled: "An Act to regulate the consignment and sale on commission of farm produce, and to repeal an Act therein named," approved June 28, 1919, as amended, which said Act was unconstitutional and void in that it contravened the provisions of Article I, Section 8, clause 3, of the Constitution of the United States, as said Act was a restriction on and regulation of interstate commerce and imposed a burden on interstate commerce contrary to said provisions.

9. Defendant further avers that many of the shipments alleged to have been made in plaintiff's statement of claim, were shipments of commodities in interstate commerce, and that if said Act of the State of Illinois is construed to cover shipments in interstate commerce, it is unconstitutional and void under the provisions of Article I, Section 8, clause 3 of the Constitution of the United States, in that such Act as so construed, is a restriction on and a regulation of interstate commerce.

10. Defendant further avers that the aforesaid Act of the State of Illinois is unconstitutional and void under the pro-

visions of Article II, Sections 2 and 19 of the Constitution of the State of Illinois, in that it deprives the defendant, The G. H. Cross Company, of its property without due process of law and denying to it equal protection of the law, and of a legal remedy for injury to its property and of right and justice; and also under the provisions of Article [fol. 94] IV, Section 22 of the same, in being special or class legislation. Defendant further avers that said Act of the State of Illinois is inconsistent, uncertain, incomplete and indefinite, therefore void.

11. Defendant further avers that a great many of the shipments alleged by the plaintiff to have been made, were shipments in interstate commerce, and that the Congress of the United States in 1930 did enact a certain statute entitled the Perishable Commodities Act of 1930, (46 Statutes 531) which covers the subject matter of consignment shipments in interstate commerce of perishable commodities, being the same subject matter as is covered in the above mentioned Act of the State of Illinois, and the defendant therefore avers that said statute of the State of Illinois is thereby superseded and becomes of no effect as to such interstate commerce of consignments of perishable commodities.

12. Defendant further denies that any action has accrued to the plaintiff to demand of the defendant the sum of Five Thousand Dollars ($5000.00) or any other sum, that the defendant owes the plaintiff this sum or any other sum, and that there is due to the plaintiff after all its just credits, deductions and set-offs, the sum of Five Thousand Dollars ($5000.00).

Lloyd W. McConnaughay.

Subscribed and sworn to before me this 13th day of October, A. D. 1933. Paul O. Menges, Notary Public. (Seal.)

[fols. 95-113] In Municipal Court of Chicago

First Class No. 2765930

The People of the State of Illinois, etc.

vs.

G. H. Cross Company, etc., et al.

Judgment—Feb. 13, 1934

Finding: issues for plaintiff and against defendants, G. H. Cross Company, a corporation, and Hartford Accident & Indemnity Co., a corporation. Defendant, Hartford Accident & Indemnity Co. excepts.

Motion for new trial made and overruled. Exception.

Motion for arrest of judgment made and overruled. Exception.

Judgment on finding versus defendants G. H. Cross Company, a corporation, and Hartford Accident & Indemnity Co., a corporation, in debt, $5,000.00; damages assessed $13,896.14. Judgment to be satisfied upon the payment of $5,000.00 with costs and interest from date of judgment, and that execution issue thereon.

Defendant duly excepts.

Enter.

John J. Lupe, Judge, Municipal Court.

February 13, 1934.

[fols. 114-116] In Supreme Court of Illinois

No. 22532

People State of Illinois ex Rel. Walter W. McLaughlin, Director of Agriculture, Appellee,

vs.

G. H. Cross Company, and The Hartford Accident and Indemnity Company, Appellants

Appeal Municipal Court of Chicago

Order Granting Motion to Consolidate—April 19, 1934

Now on this day the Court having considered motion by appellants to consolidate this cause with No. 22533, People

ex rel. Walter W. McLaughlin, Director of Agriculture, appellee, vs. G. H. Cross Company and The Hartford Accident and Indemnity Company, appellants, and to submit both cases on consolidated abstract of record and one set of briefs and reply briefs, and the Court being advised in the premises grants the motion.

[fol. 117] IN SUPREME COURT OF ILLINOIS

Docket Nos. 22532-22533—Agenda 38—October, 1934.

THE PEOPLE ex Rel. WALTER W. McLAUGHLIN, Director of Agriculture, Appellee,

v.

THE G. H. CROSS COMPANY et al.—(THE HARTFORD ACCIDENT AND INDEMNITY COMPANY, Appellant)

OPINION—Filed Oct. 14, 1935

MR. JUSTICE WILSON delivered the opinion of the court:

Two actions of debt were brought in the name of the People of the State of Illinois by the Director of Agriculture on behalf of various shippers against the G. H. Cross Company and the defendant the Hartford Accident and Indemnity Company, in the municipal court of Chicago, for the recovery on two bonds given by the parties named, as principal and surety, to the People of the State of Illinois in the sum of $5000. The two cases were consolidated and heard on an agreed statement of facts. Judgment was rendered for the Director of Agriculture. The surety has appealed to this court.

The statement of claim set forth that the G. H. Cross Company was on July 1, 1931, a corporation organized under the laws of Illinois and thereafter engaged in the business of receiving farm products for sale on commission. The Hartford Accident and Indemnity Company was on that date a corporation acting as surety on bonds. The principal and surety herein named entered into a written obligation reciting that the G. H. Cross Company had applied to the Director of Agriculture of this State for a license to engage in the business of receiving farm products for sale on commission, pursuant to the provisions of "An

act to regulate the consignment and sale on commission of farm produce," approved June 28, 1919, in force July 1, 1919, as amended. The bond was in accordance with the provisions of the act, and was conditioned that if the principal should honestly account for and handle all the produce received, make payment to the consignors of all moneys received for merchandise consigned, and should indemnify and keep indemnified the consignors from and against all fraudulent acts in the sale and handling of the produce of the consignors, the obligation should be void. The license was issued. The statement of claim also alleged that there was delivered to the Cross Company produce described therein, of the value stated, for sale on commission, and that the Cross Company did not honestly account for and handle nor make payment for the produce so delivered and did not indemnify the consignors against its fraudulent acts [fol. 118] in the handling of their produce, by reason of which the actions accrued.

An affidavit of merits and amended affidavit of merits were filed, averring in each case that the alleged bond mentioned in the statement of claim was not approved by the Director of Agriculture, as required by the act to regulate the consignment and sale on commission of farm products. The affidavit denied that the Cross Company had not honestly accounted for and handled farm products on consignment; averred that the consignor did not, within sixty days after the shipment of farm products, make demand for an accounting or payment, or file with the Director of Agriculture a copy of demand, setting forth the nature and amount of the goods consigned. It is averred that the act mentioned requires a commission merchant to keep his records for a period of six months, only, while more than nine months in one case and nineteen months in the other had elapsed since the dates of the shipments and transactions mentioned and the filing of the actions, and that the records were not then open to inspection by the plaintiff, and that the plaintiff could not state that the Cross Company did not honestly account for or make payment for the farm products delivered to it for sale on consignment.

It is averred that the act to regulate the consignment and sale on commission of farm products is unconstitutional, as a violation of the third clause of section 8 of article I of the constitution of the United States, because it is a restriction on and a regulation of interstate commerce, and that

the shipments mentioned were shipments in interstate commerce, and that the Congress of the United States had enacted a statute covering the subject matter of consignments and shipments of perishable commodities in interstate commerce, and that it supersedes the Illinois statute on the same subject matter. It is averred that the statute under which the bond was given violates the fourteenth amendment of the constitution of the United States and sections 2 and 19 of article 2 of the constitution of Illinois, providing against the taking of property without due process of law. The question presented by this last averment was not argued and is not considered.

The Cross Company solicited and received shipments of farm produce at its place of business in Chicago, which produce remained in the original packages in which it was shipped and was the property of the original consignors and sold for their account by the Cross Company on a [fol. 119] commission basis. No consignments were purchased by that company for its own account, to be re-sold by it. The produce handled by the Cross Company was shipped to Chicago from points within and without the State and was sold by it to purchasers *wherever they might* be located. Less than five percent of the produce originated in this State and the remainder was shipped from other States. The company was actively in the business for a long time prior to July 1, 1931, and until October 12, 1932, when an involuntary petition in bankruptcy was filed against it and it was thereafter adjudged a bankrupt.

During the period it was in business the Cross Company issued and mailed to the respective consignors of produce the account of sales, showing the selling price of the produce, the transportation and drayage charges, the brokerage fees and the net proceeds due the respective consignors. The shipments of farm produce alleged in the statement of claim to have been made to the Cross Company were made at the times shown in that statement and for the amounts therein appearing, and they so appear on the books of the Cross Company, but no part of the accounts has been paid to the consignors mentioned in the statement of claim.

The defendant's principal contentions are: The Commission Merchants act is unconstitutional because it restricts and imposes a burden upon interstate commerce, in violation of the Federal constitution; that the Federal Congress having undertaken to regulate interstate commerce in the

particular class of business here involved, the State legislature was deprived of the right to regulate it; that the act is unconstitutional because it delegates arbitrary power to administrative officers without rule or regulation, and is uncertain, inconsistent, incomplete and indefinite; that the provisions of the act under which the bond was exacted must be regarded as though they were incorporated in the bond, and that, the act being unconstitutional, the bond is unenforceable against both the principal and surety.

The plaintiff's contentions are: The act is within the police power of the State to prevent fraud and affects interstate commerce only incidentally and remotely and that the regulation is legal; that the State has the concurrent right with Congress to legislate with reference to agricultural products, and that the requirements of the bond are certain and enforceable.

[fol. 120] The act in question includes and covers produce such as is involved in the actions instituted. Section 2 provides that no person, firm or corporation shall receive, sell or offer for sale, or solicit consignments or shipments for sale on commission within this State, any kind of farm produce without a license as provided by the act. An application must be filed with the Director of Agriculture for a license to do a commission business in farm produce, and a payment of ten dollars and a bond are required, to be renewed each year. Section 3 provides that the bond is to secure an honest accounting and handling of produce received and for the payment therefor to the consignor. The Director of Agriculture may bring an action in any court of competent jurisdiction in the county in which the place of business of the licensee is located to recover payment for the goods sold on commission and not paid to the consignor. Section 4 gives power to the Director of Agriculture and his assistants to investigate, either upon a verified complaint of any interested person or whether or not a complaint is filed, the record of any person, firm or corporation applying for a license, or any transaction involving the solicitation, receipt, sale or attempted sale of farm produce, the failure to make proper and true accounts and settlements, the making of false statements as to market conditions with intent to deceive, or the failure to make payment for goods received or other alleged injurious transactions, and may examine the ledgers, books of account, memoranda or other documents relating to the transac-

tion involved of any commission merchant, and may take testimony. The same section provides how a consignor may proceed who has not obtained an honest accounting in any transaction. Section 5 provides that the director may decline to grant a license, or may revoke one already granted, for different causes enumerated, among which are that the licensee has failed to account promptly and properly or to make settlements, with intent to defraud. Section 7 provides that the commission merchant shall make a record of the receipt and handling of the produce, keep the record thereof for six months, and has the burden of proving the correctness of his records as to any transactions which may be questioned. Section 8 provides that any person or firm guilty of a violation of the act shall be guilty of a misdemeanor and punished by a fine of not less than $25 nor more than $500. Laws of 1919, pp. 14 to 18; Laws of 1927, pp. 6 to 8.

[fol. 121] Chapter 20 of title 7, on agriculture, of the United States Code, relating to farm produce received in interstate commerce by commission merchants and others, provides, among other things, (section 491,) that any person, firm, association or corporation receiving, among other merchandise, farm products of any kind or character in interstate commerce for or on behalf of another, who without good and sufficient cause therefor shall destroy or abandon, discard as refuse or dump any produce directly or indirectly, or through collusion with any person, or who shall knowingly and with intent to defraud make any false report or statement to the person, firm, association or corporation from whom any produce was received, concerning the condition, quality, quantity, sale or disposition thereof, or who shall knowingly and with intent to defraud fail truly and correctly to account therefor, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $100 and not more than $3000, or by imprisonment for a period not exceeding one year, or both, at the discretion of the court. Section 492 provides that the Secretary of Agriculture shall by regulation provide for the making of prompt investigations and the issuing of certificates as to the quality and condition of produce received in interstate commerce, upon application of any person, firm, association or corporation shipping, receiving or financially interested in such produce. Such regulations shall designate the classes of persons qualified and author-

ized to make such investigations and issue such certificates. By section 493 the Secretary of Agriculture is authorized and directed to enforce the provisions of the act. By section 494 the Secretary of Agriculture may make such rules and regulations as he may deem advisable to carry out the provisions of the chapter, and may cooperate with any department or agency of the government, any State, Territory, district or possession, or department, agency or political subdivision, or any person. Section 496 provides that the chapter shall not abrogate or nullify any other statute, whether State or Federal, dealing with the same subjects as chapter 20, but it is intended that all such statutes shall remain in full force and effect, except in so far as they are inconsistent with the United States act or repugnant to it. U. S. C. A. title 7, (cumulative part,) chap. 20, pp. 29, 30, 31.

Whether a State legislative act violates the commerce clause of the United States constitution and the acts of [fol. 122] Congress in pursuance thereof may involve the consideration of a variety of rules of law, applicable or not, as the special facts of a given case require. Interstate commerce is not a technical legal conception but a practical one drawn from the course of business. (Minnesota v. Blasius, 290 U. S. 1.) A State may make valid enactments in the exercise of its legislative power to promote the welfare and convenience of its citizens, although in their operation they may have an indirect effect upon interstate traffic. (Pennsylvania Railroad Co. v. Hughes, 191 U. S. 477, 488; Sligh v. Kirkwood, 237 id. 52; South Covington and Cincinnati Street Railway Co. v. City of Covington, 235 id. 537; Sherlock v. Alling, 93 id. 99.) In enacting police regulations the State is not bound to cover the whole field of possible abuses. (Patsone v. Pennsylvania, 232 U. S. 138, 144; People v. Monroe, 349 Ill. 270, 290.) Protection against the fraudulent acts of those entrusted with the property of others is a legitimate subject of the police power. (Hall v. Geiger-Jones Co., 242 U. S. 539.) But even in the just exercise of the police power the State may not interfere with the authority of Congress over the subject of interstate commerce, for Congress has exclusive power to make regulations on that subject, but if interstate commerce is only incidentally affected, State regulation is authorized, in pursuance of the police power, in matters of local concern. (Sligh v. Kirkwood, supra.) There is no constitu-

tional objection to regulations both by Congress and the States upon the same subject matter where there is no conflict, and the State may exercise its authority until Congress acts. (Savage v. Jones, 225 U. S. 501; Sligh v. Kirkwood, supra.) Congress will not be deemed to have superseded or excluded State action under the commerce clause unless its intention to do so has been made definite and clear. (Mintz v. Baldwin, 289 U. S. 346.) The act of Congress, the substance of which has been here stated, recognizes the right of, and authorizes the States to enact, concurrent legislation with respect to the subject matter of the act and not inconsistent therewith or repugnant thereto.

Whether a series of acts in a given case constitutes the carrying on of interstate commerce is to be determined by what is actually done. (South Covington and Cincinnati Street Railway Co. v. City of Covington, supra.) They may constitute commerce though not of an interstate nature, or they may result in interstate commerce though not yet commenced, or the interstate transportation may have [fol. 123] terminated. Merchandise which has been unloaded and stored ceases to be a subject of interstate commerce and loses its immunity from State taxation or regulation. (Nashville, Chattanooga and St. Louis Railway Co. v. Wallace, 288 U. S. 249, 266; Gregg Dyeing Co. v. Query, 286 id. 472; Hart Refineries v. Harmon, 278 id. 499; Susquehanna Coal Co. v. Mayor of South Amboy, 228 id. 665; Bacon v. Illinois, 227 id. 504, 516, 517; General Oil Co. v. Crain, 209 id. 211; Kehrer v. Stewart, 197 id. 60; Minnesota v. Blasius, supra.) Where the business, in its essential national aspect, has come to an end and the condition existing or the acts under consideration performed are local, they are not subject to regulation by the Federal government, (Schechter Poultry Corp. v. United States, 79 U. S. (L. ed.) 888,) but they are subject to regulation by the State. (Public Utilities Com. v. Landon, 249 U. S. 236.) In Hall v. Geiger-Jones Co. supra, the court decided the question with respect to the power of the State to license persons engaged in the business of selling securities in the State of Ohio to prevent fraud. The law applied to the disposition of securities within the State, and while information concerning those issued in other States and foreign countries was required to be filed, they were only affected by the requirement of one who dealt with securities in the State. Upon their transportation into the State there was

no impediment. There was no regulation or interference with them after they reached the State. There was an exaction, only, that he who disposed of them in the State should be licensed to do so, and this only that they might not appear in false character and impose an appearance of value which they did not possess. It was only an indirect burden upon them as objects of interstate commerce.

Counsel for defendant assert that the present case is within the rule announced in Swift & Co. v. United States, 196 U. S. 375, which held that when cattle were sent from a place in one State with the expectation that they will end their transit, after purchase, in another State, and when in effect they do so, with only the interruption necessary to find a purchaser at the stock yards, and when this is a constantly recurring course, it constitutes interstate commerce, and the purchase of the cattle is an incident of such commerce. In that case a suit was brought against a number of corporations, firms and individuals of different States alleging that they were engaged in interstate com- [fol. 124] merce in the purchase, sale, transportation and delivery, and subsequent re-sale at the point of delivery, of meats, and that they combined to refrain from bidding against each other in the purchase of cattle, to maintain a uniform price at which the meat should be sold, and to maintain uniform charges in delivering meats thus sold through the channels of interstate trade to the various dealers and consumers in other States. They thus artificially restrained commerce in fresh meats from the purchase and shipment of livestock from the plains to the final disposition of the meats to the consumers in the markets of the country. The collective effect of all the facts charged in the bill constituted commerce among the States. That decision, however, recognizes a distinction between the facts therein alleged and those involved in the conduct of a local business by commission merchants, even when that which the brokers are employed to sell is an object of commerce among the States. When the brokers are not the buyers and sellers but furnish only the facilities for sales their business affects commerce among the States only indirectly.

Hopkins v. United States, 171 U. S. 578, is cited in the foregoing decision. In this latter case an unincorporated volunteer association of men assisted individual members of the association in receiving livestock from owners in various States, in feeding and preparing their livestock for

the market, disposing of it and receiving the proceeds from purchasers. They paid the owners their proportion of the proceeds after deducting charges, expenses and advances. In deciding whether the business conducted by the association was interstate commerce the court said: "We come, therefore, to the inquiry as to the nature of the business or occupation that the defendants are engaged in. Is it interstate commerce in the sense of that word as it has been used and understood in the decisions of this court? Or is it a business which is an aid or facility to commerce, and which, if it affects interstate commerce at all, does so only in an indirect and incidental manner? * * * The business of defendants is primarily and substantially the buying and selling, in their character as commission merchants, * * * livestock which has been consigned to some of them for the purpose of sale, and the rendering of an account of the proceeds arising therefrom. The sale or purchase of livestock as commission merchants * * * is the business done, and its character is not altered because the larger proportion of the purchases and sales may be of [fol. 125] livestock sent into the State from other States or from the Territories. Where the stock came from or where it may ultimately go after a sale or purchase, procured through the services of one of the defendants, * * * is not the substantial factor in the case. The character of the business of defendants in this case must be determined by the facts occurring at that city [the place they conducted their business]. * * * It does not appear that the defendants are engaged in interstate commerce."

The business of the Cross Company is more like the business of an individual member of the association referred to in the case last cited than to the business of one of the defendants engaged in the meat-packing business in Chicago and other cities referred to in Swift & Co. v. United States, supra. The present case is somewhat similar to the recent case of Schechter Poultry Corp. v. United States, supra. That corporation conducted a wholesale poultry slaughter-house market in Brooklyn, New York. It purchased live poultry from commission men at markets or railroad terminals in New York City, and occasionally in Philadelphia, for slaughter and re-sale to retail poultry dealers and butchers, who in turn sold directly to consumers. Ninety-six per cent of the live poultry marketed in New York City comes from other States. Notwithstand-

ing the poultry came from other States, it was held that code provisions promulgated by the President, under congressional authority, relative to wages of employees and hours of employment, did not concern its transportation from other States. Persons employed in slaughtering and selling in local trade are not engaged in interstate commerce. Their hours of work and wages have no direct relation to interstate commerce.

The Cross Company conducted an independent business in the State of Illinois. Its agency was not confined to representing the shippers whose produce was handled in these cases. Though there was not a sale to the consignee, the produce had come to rest at its destination in Chicago, to be thereafter sold by the commission merchant or corporation on a commission basis. It had been withdrawn from the carriers and was not in transit. It had a situs in this State and no other destination was in the contemplation of the shippers. Some of the produce was in storage for a considerable period of time and substantial storage charges accrued. In one of the actions it was stipulated that apples were stored, and storage charges amount- [fol. 126] ing to $168.93 were deducted from the gross sale price. Whether any or all of the produce in the other action was placed in storage is not disclosed by the record, but it was an established practice of that company, when necessary to obtain the best selling price, to place produce in storage. The regulations provided in the act here in question had nothing to do with the shipments as such but related only to the conduct of the business to prevent fraud, and they did not operate directly to restrain or burden interstate commerce. Under these circumstances it is immaterial whether the produce remains in the original packages of the shipper or whether there has been an actual transfer by sale. The shipment was to a particular destination for the use of the consignor or that he should have the proceeds of a sale by a commission merchant. (Hart Refineries v. Harmon, supra; Bacon v. Illinois, supra; Woodruff v. Parhan, 75 U. S. 123.) That the business conducted by the Cross Company is in the nature of a local facility only indirectly affecting interstate commerce and is subject to regulation under the police power is supported by the reasoning in Hopkins v. United States, supra, and Hall v. Geiger-Jones Co. supra.

It is immaterial that the date of the institution of the suits was more than nine and nineteen months, respectively, subsequent to the time of shipments, because commission merchants are required to keep their records only six months. What the commission merchant's record contained was stipulated as a fact in this case. The six-months period for keeping the record or records was not a limitation upon the time within which an action should be commenced. Although it was averred in the amended affidavit of merits that demand was not made within sixty days after the shipment of the produce there is now no contest upon that question.

It is contended that the statute with respect to the bond required, is void because it delegates arbitrary power to administrative officers without rule or regulation, and is too indefinite where it is provided, "all bonds to be of a standard form as to terms and conditions, approved by the director, and to secure an honest accounting." Among the cases cited are People v. Beekman & Co. 347 Ill. 92, and People v. Federal Surety Co. 336 id. 472. In the former case it was held that a bond of not less than $2000 nor more than $50,000, conditioned that the principal would comply with the Securities law of the State and would conduct his [fol. 127] business so as not to work a fraud, and would make sales without material misrepresentations, and would account to persons interested for money and property received and deliver securities to purchasers or persons entitled thereto when paid for and due to be delivered, "with terms and in form to be approved by the Secretary of State," and authorizing the inclusion of other terms not specified in the act, vested discretionary power in an administrative officer without properly defining the terms under which his discretion was to be exercised, and was invalid. In People v. Federal Surety Co. supra, the bond was variant from the provisions prescribed by law and was illegal. The State, in the exercise of the police power, has authority to regulate the business and require such safeguards as are appropriate to protect customers of commission merchants against dishonesty. The requirement of a bond from commission merchants is an appropriate means of protecting those dealing with them. A statute requiring a bond constitutes a part of the bond, and it must be assumed that the bond is executed with reference to the

provisions of the statute. (Estate of Ramsay v. People, 197 Ill. 572.) It was so provided in the bonds in the present cases and they were in accordance with the provisions of the statute. The provision in the act as to the bond was that it should be in the definite and exclusive sum of $5000. All bonds were to be of a standard form as to terms and conditions, approved by the Director of Agriculture, to secure an honest accounting and handling of produce received. In the present case there was no lack of uniformity and there was no special discretion committed to the Director of Agriculture, but the standard form as to terms and conditions would be such as were in accordance with the statute. In Hall v. Geiger-Jones Co., supra, a law regulating the dealing in investment securities was under consideration. The commissioner or superintendent of banks and banking in Ohio was required to be satisfied as to the good repute in business of the applicant and named agents. It was contended that the law conferred arbitrary power upon him. It was held that the law was addressed to a complex situation. Its purpose was to give a basis for judgment of the securities offered the purchasing public, secure credit where it was deserved and confidence to investment and trading, prevent deception and save credulity and ignorance from imposition, so far as it could be done by the approved reputation of the seller of the securities, and [fol. 128] provide authoritative information. The regulation was held sufficiently definite and the discretion allowed the commissioner not arbitrary. Neither the act nor the bond in the present case is subject to the criticism offered against them. Nebbia v. New York, 291 U. S. 502, 522, 523; Payne v. State of Kansas, 248 id. 112; People v. Perrette, 253 N. Y. 305, 308, 309.

The judgment of the municipal court is affirmed.

Judgment affirmed.

[fol. 129] IN SUPREME COURT OF ILLINOIS

No. 22532

PEOPLE STATE OF ILLINOIS ex Rel. WALTER W. McLAUGHLIN, Director of Agriculture, Appellee,

vs.

G. H. CROSS COMPANY and THE HARTFORD ACCIDENT AND INDEMNITY COMPANY, Appellants

Appeal from Municipal Court of Chicago, Municipal Court No. 2765929

JUDGMENT—Oct. 14, 1935

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the Judgment of the Municipal Court aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error;

Therefore, it is considered by the Court that the Judgment of the Municipal Court aforesaid be Affirmed in all things and stand in full force and effect, notwithstanding the said matter and things therein assigned for error.

[fols. 130-138] IN SUPREME COURT OF ILLINOIS

No. 22533

PEOPLE STATE OF ILLINOIS ex Rel. WALTER W. MCLAUGHLIN, Director of Agriculture, Appellee,

vs.

G. H. CROSS COMPANY and THE HARTFORD ACCIDENT AND INDEMNITY COMPANY, Appellants

Appeal from Municipal Court of Chicago, Municipal Court No. 2765930

JUDGMENT—Oct. 14, 1935

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the Judgment of the Municipal Court aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error;

Therefore, it is considered by the Court that the Judgment of the Municipal Court aforesaid be Affirmed in all things and stand in full force and effect, notwithstanding the said matter and things therein assigned for error.

[fols. 139-152] IN SUPREME COURT OF ILLINOIS, JUNE TERM, A. D. 1934

Consolidated Cases Nos. 22532-22533

THE PEOPLE OF THE STATE OF ILLINOIS ex Rel. WALTER W. McLAUGHLIN, Director of Agriculture (Plaintiff), Appellee,

vs.

G. H. CROSS COMPANY, a Corporation, and HARTFORD ACCIDENT & INDEMNITY Co., a Corporation, Defendants

On Appeal of Hartford Accident & Indemnity Co., a Corporation, Appellant.

Appeal from Municipal Court of Chicago

Honorable John J. Lupe, Trial Judge

ORDER OF SEVERANCE—Filed Dec. 5, 1935

It appearing to the court that G. H. Cross Company, a corporation, one of the defendants in the above entitled consolidated causes and Sam Howard, trustee in bankruptcy of G. H. Cross Company, a corporation, bankrupt, have been duly notified and requested by said Hartford Accident and Indemnity Company, a corporation, the other defendant in the above entitled consolidated causes, to join in its petition for appeal to the Supreme Court of the United States from the judgment entered herein on October 14, 1935, but have failed or refused to join therein, the said Hartford Accident and Indemnity Company, a corporation, is hereby granted the right to appeal alone, without joining said G. H. Cross Company, a corporation, as appellant.

Enter.

Clyde E. Stone, Chief Justice of the Supreme Court of the State of Illinois.

Dated December 5th, 1935.

[fol. 153] IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1935

[Title omitted]

ORDER ALLOWING APPEAL, WITH SUPERSEDEAS AND ORDER APPROVING BOND—Filed Dec. 5, 1935

The appellant in the above entitled consolidated causes, having prayed for the allowance of an appeal in said causes to the Supreme Court of the United States from the final judgment made and entered in the above entitled causes by the Supreme Court of the State of Illinois on the 14th day of October, 1935, (no petition for re-hearing having been filed within the time prescribed by the rules of the Supreme Court of the State of Illinois, in accordance with statutes of Illinois, (Illinois Revised Statutes, 1935, Chap. [fol. 154] 110, Paragraphs 130 and 263 (5)) and from each and every part thereof, and having presented and filed its petition for appeal, assignment of errors and prayer for reversal, pursuant to the statutes and rules of the Supreme Court of the United States in such case made and provided and upon due consideration thereof and of the record;

It is ordered that said petition for appeal is hereby granted, and that the appeal be and the same is hereby allowed to the Supreme Court of the United States from the judgment of the Supreme Court of the State of Illinois in the above entitled consolidated causes as provided by law, upon petitioner filing a bond in the sum of Seventy Five Hundred Dollars ($7,500.00), with sufficient sureties, and conditioned as required by law, and it is hereby further ordered that the same shall operate as a supersedeas of the judgment made and entered in the above entitled consolidated causes and shall suspend and stay all further proceedings until the termination of said appeal by the Supreme Court of the United States.

It is further ordered that the Clerk of the Supreme Court of the State of Illinois shall prepare and certify a transcript of the record, proceedings and judgment in said consolidated causes and transmit the same to the Supreme Court of the United States within forty (40) days from the date hereof.

The said appellant now presenting a bond in the sum of Seventy Five Hundred Dollars ($7,500.00) with The Ætna

Casualty and Surety Company of Hartford, Connecticut, as surety, it is ordered that the said bond be and it is hereby approved.

[fols. 155-195] Dated December 5th, 1935.

Clyde E. Stone, Chief Justice of the Supreme Court of the State of Illinois.

[fol. 196] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed Jan. 10, 1936

Now comes the Hartford Accident and Indemnity Company, a corporation, the appellant in the above entitled cause, and states that the points upon which it intends to rely in this Court in this case are as follows:

1. The Supreme Court of Illinois in its judgment construing the statute of the State of Illinois, entitled "An act to regulate the consignment and sale on commission of farm produce", approved June 28, 1919, in force July 1, 1919, as amended (Cahill's Illinois Revised Statutes, 1933, Ch. 5, paragraphs 24 to 32), under which the bonds sued on in this case were exacted by the state authorities as a condition precedent to the obtaining of a license to engage in the interstate business regulated by said Act, committed error in that the statute as so construed by the Supreme Court of Illinois imposes a burden on interstate commerce and is therefore repugnant to the constitution of the United States, particularly Clause 3, Section 8, Article I thereof, which provides that

"The Congress shall have power

[fol. 197] First. * * *

Second. * * *

Third. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;"

2. The Supreme Court of Illinois in its judgment construing "An act to regulate the consignment and sale on commission of farm produce", approved June 28, 1919, in force July 1, 1919, as amended (Cahill's Illinois Revised Statutes, 1933, Ch. 5, paragraphs 24 to 32), under which the bonds

sued on in this case were exacted by the state authorities as a condition precedent to the obtaining of a license to engage in the interstate business regulated by said Act, committed error in that the statute as so construed by the Supreme Court of Illinois, is unconstitutional and void in that it imposes a burden upon interstate commerce and undertakes to regulate interstate commerce in a field in which the Congress of the United States in 1930 enacted the "Perishable Agricultural Commodities Act, 1930" (7 U. S. C. A. Secs. 551 to 568) which covers the consignment of shipments of perishable commodities in interstate commerce, and which requires a license from the Secretary of Agriculture for the same persons who are required to secure a state license under said State Statute, being the same subject matter as that covered by the said Act of the State of Illinois, thereby superseding said state act.

3. The Supreme Court of Illinois in its judgment construing the statute of the State of Illinois, entitled "An Act to regulate the consignment and sale on commission of farm produce" approved June 28, 1919, in force July 1, 1919, as amended (Cahill's Illinois Revised Statutes, 1933, Ch. 5, [fol. 198] paragraphs 24 to 32), under which the bonds sued on in this case were exacted by the state authorities as a condition precedent to the obtaining of a license to engage in the interstate business regulated by said Act, committed error in holding that such bonds so exacted as aforesaid were valid and enforceable as against the appellant, as surety, as well as against the principal, and in failing to hold that they were void and unenforceable as having been exacted under a state statute which is repugnant to the constitution of the United States, particularly Clause 3, Section 8, of Article I thereof.

Appellant further states that only the following parts of the record, as filed in this court, are deemed necessary to be printed for the consideration of the points set forth above, viz.:

Title of paper	Record page
Statements of claims and exhibits thereto attached	6– 10; 85 –91
Affidavits of Merits	20– 22; 91B –91E
Amended Affidavits of Merits	26– 28; 92 –94
Orders Consolidating Cases	29, 114
Stipulation of Facts	72– 77

(Note.—Exhibits A and B attached to Stipulation of Facts are the same as Exhibits A attached to each of the Statements of Claim)

Judgments of Municipal Court 34, 95
Opinion of Supreme Court of Illinois 117–128
Judgment of Supreme Court of Illinois 129–130
Order of Severance 139

Counsel for Appellant: J. F. Dammann, Sidney K. Jackson, 120 West Adams Street, Chicago, Illinois; Arthur L. Israel, 38 South Dearborn Street, Chicago, Illinois. Of Counsel: Wilson & McIlvaine, 120 West Adams Street, Chicago, Illinois; Arthur L. Israel, 38 South Dearborn Street, Chicago, Illinois.

[fol. 199] Receipt is hereby acknowledged of a true and correct copy of the above and foregoing Statement of Points to be Relied Upon and Designation of the Parts of the Record to be Printed this 7th day of January, A. D. 1936.

Otto Kerner, Attorney General of the State of Illinois, Attorney for Appellees, by Louis Salinger, Assistant Attorney General of the State of Illinois.

[fol. 200] [File endorsement omitted.]

Endorsed on cover: File No. 40,246. Illinois Supreme Court: Term No. 692. Hartford Accident & Indemnity Company, appellant, vs. The People of the State of Illinois, ex rel. Walter W. McLaughlin, Director of Agriculture. Filed January 10, 1936. Term No. 692, O. T., 1935.

(7458-C)